

REPUBLIC OF KENYA

NYANDARUA COUNTY ASSEMBLY

1ST ASSEMBLY- 4TH SESSION

OFFICIAL REPORT

Wednesday 24th November, 2016

The Assembly met at Assembly Chamber (P.C.E.A Building) at 2.30 P.M.

The Temporary Speaker, Hon. Michael Kirumba, in the chair

PRAYER

QUORUM CALL AT THE COMMENCEMENT OF THE SITTING

(There is quorum as confirmed by the Clerk-at-the-table)

Speaker: There being quorum, we can proceed with the business of the session. First order.

PETITION

NYANDARUA CONTRACTORS ASSOCIATION PETITION

Very well, pursuant to standing orders No198 (1);

A schedule of Petitions to be presented or reported to the Assembly on a sitting day may be appended to the Order Paper of the Day in the order that they shall be presented or reported.

(2) When the Order "Petitions" is read, the Speaker shall-

a) In case of a Petition presented by a Member, direct that the Member to present the Petition to the Assembly; or

b) In case of a Petition presented through the Clerk, report the Petition to the Assembly.

In this case, the petition came through the office of the Clerk and therefore the Speaker is going to present the same to the Assembly. I am required according to the standing orders 198 (3) to read the petition to the House in my way of presentation and then the same is considered as having been tabled and becomes a property of the house.

Hon. Members, the petition was received on 24th October 2016 from the Nyandarua Contractors Association by the office of the Clerk.

The clerk by a letter dated 31st October 2016 addressed me under the reference public petition from the Nyandarua Contractors Association indicated that he was in receipt of the above petition from the Nyandarua Contractors Association. The same was received in the office of the clerk as earlier stated, 24th October 2016. The clerk confirms that the petition conforms to the provisions of part 23 of the Nyandarua county assembly standing orders. I was asked to consider after the perusal of the petition to present is before the House business committee for the subsequent tabling in this House. The same was presented to the House business committee today Thursday 24th November 2016 and the House business committee after deliberation directed that the same be presented to the house this afternoon.

The petition is to the effect that;

We the undersigned, the association of Nyandarua county contractors, being citizens of the republic of Kenya and residents and working in Nyandarua county in the aforesaid republic and on behalf of the Nyandarua Contractors Association and having been contracted by the Nyandarua county government to offer construction services in the department of roads public works and transport, draw the attention of the assembly by way of this petition to the following

1. Pending bills to the contractors who are also the petitioners.
 - i. The petitioners here in having been prequalified and contracted to offer various services in the FY 2013/2014, 2014/2015 and 2015/2016, the said services contracted for having been performed to completion and the contractor/petitioners having been issued with certificates of completion the contractual amounts remained unpaid either in full or in part and are hence accumulated bills owing to the contractor/ petitioners.
 - ii. The contractors/ petitioners are apprehensive of losing their capital and income and are immobilized in undertaking other economic activities noting the long pendency of the payments.
 - iii. A cursory look at the proposed first Nyandarua county supplementary budget estimates for the FY 2016/2017 reveal that not all pending bills have been factored in the budget causing much apprehension to the contractors come petitioners.
 - iv. An invention is sought through the assembly to ensure that all pending bills owed to the contractors/ petitioners are provided for in the estimates.
2. Non-remittance of withholding VAT to the Kenya Revenue Authority.
 - i. That 6% withholding VAT is not remitted in time to the KRA
 - ii. This non-remission has caused the contractors to incur double taxation as the VAT is withheld by the county government. When the contactors/ petitioners are filing returns to KRA they are forced to clear the VAT accruals.

- iii. Where the VAT is remitted the contractors are not issued with certificates to confirm receipt at KRA which then is considered as having not been remitted.
 - iv. This has led to high penalties and interest due to the accruals.
3. Misplacement and or alteration in files.
- i. That the contractors/ petitioners files have been lost, misplaced, destroyed or altered as the same are missing in the roads department custody.
 - ii. Where the files are located the same are missing crucial documents which are essential to facilitate payment.
 - iii. Time taken for approval is long and contractors are made to believe that the payment process is long and rigorous.
 - iv. The contractors have sought audience with the executive committee member for roads public works and transport on the matter and have been promised that the pendency of the bills will be cured by the supplementary budget for the FY 2016/2017 only to find that the sum provided under that vote pending bills was not adequate to settle the outstanding amount.

Matters herein contained in this petition are not pending before any court of law, tribunal or any other statutory body. Reasons wherefore the humble petitioners pray that the assembly ensures that;

- i. A list of all pending bills owing to contractors from FY 2013/2014 to 2015/2016 are clearly enumerated with corresponding amounts for each contractor, the year of the pendency, amounts paid if any and the outstanding amounts.
- ii. That an allocation of the pending bills is made in the supplementary budget of the FY 2016/2017 to ensure that all outstanding amounts of the contractors are paid.
- iii. That withholding VAT is remitted to the Kenya Revenue Authority and the contractors are issues with certificates for the amounts so remitted.
- iv. That all files relating to contractors are availed together with all the relevant documents pertaining to the tendering, ward contracting, certification of completion of works and payments to be made
- v. That the matter be treated as urgent and accorded attention.

This is the humble petition and on behalf of the Nyandarua Contractors Association it is signed by their chairman Mr John G Wanjohi and their secretary Mercy Kamau.

In the petition it is attached the minutes of the associations meeting which resolved to petition this assembly on those ground and concerns. Attached also is the list of all the contractors who are members of that particular association.

Hon. Members pursuant to article 199 of the standing orders it is allowed at the discretion of the members I may allow comments, observation or clarifications in relation to a petition presented or reported. With that I will give until three o'clock, that is fifteen minutes, for anyone who has any comments or observation on the petition presented.

Member for Mirangine Hon. David Ndirangu Ngigi.

Hon. David Ndirangu (Mirangine): Thank you Mr Speaker, as much as I do not oppose having the pending bills in the budget, there are those contractors that did shoddy jobs and others never finished their jobs as per the BQs. When some of the petitioner were here, those that worked in Mirangine hid themselves behind others when I appeared. How can a contractor be given 989,000 yet he used only twelve lorries of murram?

Mr Speaker I remember requesting for a statement in this House on issues pertaining to roads in my ward, some of which were badly done, others not complete and others that were never done. I suspect that the contractors may have been paid. The chairperson of the Committee on Roads promised that within two weeks they would visit my ward to see these roads. Two months down the line they have not done so. I wish that for the roads that I mentioned in that statement the contractors should not be paid until the roads committee visits my ward with the works officer and the chief officer department of roads. For those that have done their work as per the BQs they should be paid because that is their right. Those that did shoddy work should not be paid. Thank you Mr Speaker

Speaker: Member for Njabini Kiburu and the chairperson of the Committee on Budget and Appropriations.

Hon. James Gachomba: Thank you Mr Speaker, I also would like to comment on the contractors petition. I believe that this was the right channel for the contractors pass their grievances. These contractors were awarded contracts to go and do the roads and implement water projects in the county. It is sad because the money to pay the contractor was allocated in the budget. Some of them went with their collaterals to the bank and borrowed loans and did their work. Eventually most of them were never paid.

I agree that there are some of the contractors that did a shoddy job. Are they supposed to be paid? Will the county government make them pay back for the poor workmanship? We are aware of a ward like Mirangine that used a huge amount of money about Kshs. 12 million on the roads but that is not reflected on the ground.

There were contractors that did a good job and the county government should ensure that they are paid. For those that did not do their works and were paid they have to give the government back its money.

Our development vote head was reduced so that the contractors can be paid. Yesterday there was a supplementary budget that was approved which was done through a consensus so

that we could get the money to pay the contractors. Mr Speaker are you aware that in this way we denied Wanjiku development projects that were meant to be done using the money in the supplementary budget so that we could pay the contractors? The money meant for them was stolen by the chief officers. I am saying that we have to pay the genuine contractors only. Before their payment there must be contract award letters and completion certificates. I repeat that the only contractors that should be paid are those that did good work but for those that did not they are not going to be paid. We cannot allow this habit to continue in our county, that a person is awarded a contract, he does not do his work and demands to be paid. The committee on roads through the chairperson and the chief officer department on roads have to make sure that the only contracts that will be paid are those that borrowed money from the bank, did their work well to completion.

Speaker: Very well, leader of majority party and the member for Murungaru Hon. Kariuki Muchiri.

Hon. Kariuki Muchiri: Thank you Mr Speaker, for according us time to comment on the petition. Mr Speaker it is important that this county pay those contractors, those who are genuine, however in this county there are those that are not genuine. The most unfortunate thing and especially for the works that were done in the FY 2013/2014 is that the thieves, crooks and the brief case contractors were the first people to be paid. The little money that was for the quarry people. I want to speak for especially for the quarry people. They had not even registered those quarries. They go into an agreement with the government through the sub county administrators. There is one fellow from Githioro ward that supplied material worth more than one million to the government. He is a very young man and up to date he has not been paid.

We are saying that before these people are paid, some are genuine and have really suffered, let the chief officer give this assembly a list of all those contractors and those that own the quarries that supplied materials who have not been paid. For those that supplied materials to the county government and their quarries were not registered, there should be a very serious communication to the chief officer and the executive committee member roads that before they touch that money that we are going to appropriate, they should be categorical of the money for the FY 2013/2014, the amount and details to whom the money will be paid (the contractors and the owner of quarries). This will ensure that records are well kept so that those who come after us will not have to put money for the pending bills in the budget. This way we shall curb cheating and stealing in that department. Thank you

Speaker: Yes member for Rurii Hon. Peter Wahome Kamoche

Hon. Wahome Kamoche: Thank you Mr Speaker, we appreciate that they have brought this petition... *(Inaudible)*

Speaker: You cannot be heard please speak up...

Hon. Wahome Kamoche: I was saying that I appreciate that the petition was brought to this House in the proper way. I expected that they would give us a timeline and ask the delegated committee to take this up because this is a petition. Under Standing Order 187...

(Hon. Kiruka Mburu rises on a point of order)

Speaker: What is it member for Charagita?

Hon. Kiruka Mburu: Mr Speaker, I want to seek some clarification from you because you have said that the Committee on Roads should take up this matter. What about the other departments that have pending bills on some works that were done?

Speaker: Hon. Members, I will start with where the member for Charagita has concluded. Actually this petition is by road contractors only and they have indicated as much in the petition and that is why I have confined it to the committee on roads. That is also the very reason that I have not involved the Committees on Intergovernmental and Delegated Legislation. If they had indicated that it cuts across we would have been forced to form a select committee picking at least one member from every committee. However the petition is very clear because it is confined to the committee on road, public works and transport.

The other issue is that the chairperson of the committee should tell us where we are headed to because we need to pay this money and we need to pay to the right people. What time do you require working overtime to bring a report to this house?

Hon. Kimani Gachuhi: Thank you Mr Speaker, this is a situation that we shall require to cooperate with the rest of the members because this is a thing that has been happening within the wards. No one among the members has asked the committee on roads to investigate and bring a report on these roads. All that we have are hearsay. It becomes difficult when some members decide to cover some of the contractors. That is the same challenge that we are likely to face and I therefore request that you give us one month.

Speaker: Members if the chairman has to bring in a comprehensive report because we are going back to the FY 2013/ 2014, 2014/2015 and 2015/ 2016, the law gives him 60 days and he is asking for 50% of that time, we have to give him time and we shall accord him all the facilities that he shall require to bring that report within the next thirty days.

(Hon James Gachomba rises on a point of order)

What is it member for Njabini Kiburu?

Hon. James Gachomba: Mr Speaker, you are aware that for some of the contractors, their assets have been grounded or have been taken by the banks and those that took collateral with the banks, the interests are increasing. We need to reduce that time so that we can be able to pay the contractors.

(Hon. Kieru Wambui rise on a point of information)

Speaker: Member for Njabini Kiburu, do you require any information from the member?

Hon. James Gachomba: Yes.

Hon. Kieru Wambui: Thank you Mr Speaker, I understand that upon the approval of the supplementary budget in which we have the pending bills, immediately the appropriations are approved and signed the executive will start paying the contractors. Is the payment by the executive to the contractors pegged on the time that the approval of the report by the committee on roads will be done or is it vice versa?

Speaker: Hon. Joyce Ng'ang'a.

Hon. Joyce Ng'ang'a: Thank you Mr speaker, maybe I can give my opinion on this, that instead of relying on the members, we can ask for the list from the association and the other from the executive and then the committee can make comparison of the two. If there arises any query on certain contractor in a ward then the committee can enquire from that particular member.

Speaker: Member for Keriita Hon. Paul Nderitu.

Hon. Paul Ndiritu: Mr Speaker, if we say that the committee should wait for the list from the executive, we should also think about the delay by these *mawaziri*. I think instead of waiting for the committee on roads to solve this thing, it would be better for us to do this as a whole House while the chairperson of the Committee on Roads chairs the meeting. I am very sure that we can solve this problem within one week.

Speaker: County member from Njabini Kiburu Hon. Rebecca Nyangati

Hon. Rebecca Nyangati: Thank you Mr Speaker, I support the chairperson of the committee on roads, this is a very serious case that should not be solved in such a hurry. We are dealing with a large amount of money. There should be more investigation done because I remember of a case with a petrol station that the executive claimed that they were supposed to pay Kshs. 4 million but the station said that they owed them only Kshs. 600,000. We can have those list and after investigating the contractors...

(Consultations)

Mr Speaker, protect me from the members that are consulting loudly.

Hon. Rebecca Nyangati: Mr Speaker, I was saying that once we are done with investigating some of the contractor we have their names given to the executive so that they can be paid.

Speaker: I will not open that debate again, I want the chairperson of the committee on roads to have the final word. The other thing is that once the appropriation on supplementary budget passes, unless we pass a motion of stopping payments, the budget will be implemented. I do not think it would be fair to again wait for this report. There are members here that know that a certain contractor was working in his ward, has done the work properly. If there is no objection, I believe as we work on the other issues, where we have played oversight and we are satisfied, I do not know how we shall put it, but those ones can be cleared as we deal with the others. Proceed chairman.

(Hon. Kamau Ngotho rises)

Are you donating one minute to the member for Karau?

Hon. Kimani Gachuhi: Yes, Mr Speaker.

Speaker: Member for Karau.

Hon. Kamau Ngotho: Thank you Mr Speaker but before the chairperson concludes, you have said that we need to know the pending bills of the other years. For the FY 2013/2014 was Kshs. 88 million, 2014/2015 Kshs 34 million and 2015/2016 was Kshs.102 million. What was in the budget was Kshs. 161 million and it was added to Kshs. 230 million. Those pending bill are those in the document but there are those whose documents cannot be traced and this makes the pending bills to go up to Kshs. 300 million. As you sit and ask for more time those that have document will be paid and in the process so many genuine cases will be left out. The chairperson of the committee on roads must act with speed because if they are paid that will be considered as water under the bridge.

Speaker: Yes chairman.

Hon. Kimani Gachuhi: I wanted to move toward what he has said. One month will be the maximum time that we are going to use for this task. This can be done even in a week if the working environment will allow us to do that in one week.

Speaker: Members I think what we shall do is that immediately after this session I am going to do a very candid letter to H. E requesting him to direct the department of roads that on Monday morning, even the department of finance will work over the weekend on the appropriations bill so that it is published on Monday, they have the pending bills, how do they budget for them if they do not have them; to present a comprehensive report you by Monday at 9 to 10.

For the Hon. Members, the issues on your area, you can present your issues to the committee for the whole day so that they can start working on it by Tuesday and probably by Friday they shall have a comprehensive report.

Next order.

MOTION

1. TRANSCRIBED ADDRESS OF HON. ENG. MURIUKI KARUE, THE SENATOR
NYANDARUA COUNTY

The motion was moved on behalf of the leader of majority by the member for Central Hon. Peter Maina Mwangi but the member for Murungaru and the leader of majority had not contributed to the motion.

Hon. Kariuki Muchiri: Thank you Mr Speaker, I beg to move the following motion: That the assembly be recorded the exposition of the public policy contained in the address of the Senator, Nyandarua County. This is a continuation.

(Hon. Wambugu King'ori rises on a point of order)

Speaker: What is it Hon. Edinald Wambugu King'ori?

Hon. Wambugu King'ori: Thank you Mr Speaker, this motion was moved appropriately by the member for central, is it in order for the member for Murungaru to move it again.

Speaker: I think I gave directions that he will only contribute because the motion has been moved, I did not hear him say that he is moving it again.

Hon. Wambugu King'ori: Actually Mr speaker, he read from the order paper...

Speaker: Then member for Murungaru withdraw the moving of the motion and contribute to the motion.

Hon. Kariuki Muchiri: I withdraw though will I read the motion.

Speaker: It is okay to read the motion. You can read that you are contributing on a motion that the assembly be recorded the exposition of the public policy contained in the address of the Senator, Nyandarua County. The element that was wrong here was the moving because it cannot be moved twice.

Hon. Kariuki Muchiri: Thank you Mr Speaker for that guidance. I was not able to contribute to this motion yesterday because I was in a meeting. I have three issues that I would like to talk about. One is that the standing orders number 23 are very clear that the address should be tabled in the assembly after the governor or the senator dispenses with it. In this case the senator did not have the address and I do not think we were supposed to discuss it. The senator was aware that he was coming to address the assembly and from the look of it he was not prepared because all he had were short notes. This address had to be extracted from the Hansard. Even if we are thanking him for addressing this House it should be communicate to him that next time when he wants to address the assembly he should have a written speech so that the leader of majority can table it after he is done.

In his address, he talked about a milk industry, I agree with him because this is a county of potatoes and milk. We produce a lot of milk in this county and if we have our own industry, we can be able to add value to that milk. It is also unfortunate that he has donors and the assembly had not provided for land in the budget. I urge the House to make that provision in the exit budget because we need that industry.

(Hon. James Gachomba rises on a point of order)

Speaker: What is it member for Njabini Kiburu?

Hon. James Gachomba: Mr Speaker, I have seen the address by the senator, Muriuki Karue but it has no signature. I think the author of the document should have signed it so that the assembly should continue and discuss it.

Speaker: I had foreseen this and that is why I pre-empted after the senator addressed the House, I rose and said that under standing order no 20,21,22,23,24 which say that the Governor, the Senator or any other distinguished guest shall address the assembly. It does not say that it is through a written document. He addressed the assembly and we expected that as he addresses the House, you should take notes on the areas of concern and expound the speech from what we had already noted. However to make it comfortable for our members and to facilitate the members' mandate under section 12 of the county government act, we transcribed for you so that it is easy to do exposition of the same.

Member for Murungaru proceed.

Hon. Kariuki Muchiri: Thank you Mr Speaker, the other issue that the senator addressed is the ward development fund. We have one more budget to see being prepared while we are in this assembly, I urge the members to put substantial amount in the ward development fund. This is the money that even the executive does not touch. When they are doing any virement, the executive should be careful not to touch money meant for ward development. If we can have it pegged to about Kshs.15 million, this money will go a long way in improving the livelihood of the people. If we put it at Kshs. 10 million even the next assemblies will do that since the first assembly put is at Kshs. 10 million. I support the address of the senator and his policies.

Speaker: yes member for North Kinangop and the deputy speaker Hon. Edinald Wambugu King'ori.

Hon. Wambugu King'ori: I also support the speech by the Senator Nyandarua County but with some reservations. The idea of the senator to come up with a piece of land whereby we shall have a milk processing plant is very valid. But, the Senator did not do what we call a feasibility study to know whether in Nyandarua County we have an existing processing plant. In North Kinangop where I stay and represent, we have a processing plant under Muki Sacco which is a giant co-operative society. In it we have the Kinangop Dairy. In Nyandarua County, we collect 300,000 litres of milk in a day and a third of it goes to that processing plant. Muki Sacco does not belong to an individual. It belongs to the people. Did the Senator do a feasibility study to establish whether there exists such type of a processing plant? If anything, he ensured that to some extent those people require a hinterland where their production shall come from. We have Nyala Co-operative Sacco at the other end of Nyandarua County which is in the process of having their own processing plant.

Nyala covers some areas of Ndaragwa sub-county and some part of Nyoro. To me, it is good that all the Co-operatives that are here in Nyandarua and all their membership have public participation. If somebody is intending to come up with a processing plant, then the people of Nyandarua themselves will say so. We, as the people from the southern part of Nyandarua may not need a processing plant because we already have an existing one that captures the entire Kinangop and some parts of Kipipiri. So, to me, the Senator could have gone further ahead

and, just like he said that he had met leaders in the co-operative sector, ensure that there was a proper public participation.

He could also have written a policy paper that could have been adopted with or without amendment because it is our mandate as enshrined in the standing orders and also in the constitution. Article 185 subsection 4 says that the county assembly shall approve any policy that may be used in terms of development in the county. So, to me the Senator could have gone further, as a good statesman and also as a policy maker, and come up with a clear policy showing exactly what we are supposed to do. Mr. Speaker, a budget has a cycle. By that I mean, to include something in the budget, there must be the County Integrated Development Plan (CIDP), an Annual Development Plan (ADP), a Strategy Paper and Public Participation so that we can come up with budget estimates. The assembly then approves the amount that is supposed to be allocated in terms of having that portion of land or that processing plant in this county.

To me, the Senator did well because it is obviously his mandate to come and address the assembly. But, it was very untimely because this is the last minute. Mr. Speaker, if you can recall very well, the Senator is now coming to the assembly for the second time. During the first time when he came, it was like he was welcoming us to this County but he never came in the second and the third year. Now, he is coming when we are heading to the electioneering period. According to me, maybe the Senator had some reservations on it and he might be using this speech to propel his campaign when it comes to next year because he was very aware that we could not include that amount of money in the Supplementary Budget owing to the fact that the Annual Development Plan did not capture to have a vote head for a milk processing plant. To some extent, I support the speech of the Senator but with those few reservations Mr. speaker. Thank you.

Speaker: Yes Hon. Wahome Kamoche... What is it member for Nyakio, Hon. Joshua Muriithi.

Hon. Joshua Muriithi: Thank you, Mr. Speaker. The house has no quorum to debate this issue.

Speaker: Okay. So the call for lack of quorum having been raised, I would like to ask the Clerk to confirm that there is no quorum.

(There is no quorum as confirmed by the clerk-at-the-table.)

Pursuant to standing order number 35, I would ask that the division bell be rung for the initial eight minutes or until such a time within the eight minutes that quorum will have been achieved.

(The bell rings for eight minutes)

Clerk, confirm that quorum has been achieved.

(There is no quorum as confirmed by the clerk-at-the-table)

Then, pursuant to standing order number 35 (2), if on the count quorum has not appeared, the speaker or the chairperson shall propose the official bell to be rung as on division and if o quorum is present after the expiration of eight minutes, the speaker or the chair shall adjourn the assembly until the next sitting without the question being put. With that, therefore,

this assembly stands adjourned to the next sitting which is on Tuesday the 29th day of November 2016.

(The house rose at 3.57 p.m.)